



Appeal of Earle J. and Mildred H. Fischer

The sole question for decision is whether respondent **properly** computed appellants' California personal income tax liability on the basis of federal audit adjustments.

In 1973 the Internal Revenue Service audited appellants' federal income tax returns for 1971 and 1972. Various adjustments were made and, upon completion of that audit; appellants filed amended California personal income tax returns for those years.

Respondent followed the federal adjustments to the extent the California law conformed to the federal law. In reviewing appellants' amended returns, respondent also allowed them several credits which they had failed to claim. These various adjustments resulted in a proposed assessment of additional personal income tax for 1972. Respondent reduced the overpayments otherwise due appellants for the years 1971, 1973, and **1975**, and credited those amounts against the 1972 deficiency. That action gave rise to this appeal.

Appellants contend they have been harrassed by **both** respondent and the Internal Revenue Service for a number of years. They contend both agencies owe them money. Specifically, appellants object to respondent's application of \$257.42 of their claimed refund of \$838.00 **for 1975 to the deficiency found by respondent to be due for 1972.** Appellants also suggest, without substantiation, that at some point the Internal Revenue Service made supplemental adjustments in their favor for the taxable year 1972. Finally, appellants contend that in 1973 they made a prepayment of California personal income tax in the amount of \$229.00 for which respondent never gave them credit.

It is well established that a proposed assessment issued by respondent on the basis of a federal audit report is presumed correct and the burden is on the taxpayer to prove it erroneous. (Rev. & Tax. Code, § 18451; Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Harry and Jeannette Kohm, Cal. St. Bd. of Equal., Feb. 8, 1978; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 7, 1959.) In the instant case it appears that respondent followed the final federal determination to the extent allowable under California law. Its credit of a portion of the overpayments otherwise due appellants for the taxable years 1971, 1973, and 1975, to the deficiency assessed for 1972 was authorized by subdivision (a) of section 18691 of the Revenue

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and Taxation Code. Respondent further states that it has no record of the \$229.00 prepayment which appellants contend they made in 1973. Throughout these proceedings, however, respondent has made it quite clear that if appellants would come forth with documentary evidence of either the supplemental federal adjustments allegedly made by the Internal Revenue Service for the taxable year 1972, or the claimed \$229.00 prepayment in 1973, respondent would make appropriate adjustments to appellants' account. Respondent indicates that appellants have failed to produce any such substantiating evidence.

Appellants state that all of their cumulative records were destroyed in September of 1975. At the oral hearing of this matter we suggested that perhaps appellants' bank would be able to verify that a personal check in the amount of \$229.00 had been written to respondent in 1973. Appellants have since advised us that the bank maintains no such records. Unfortunately, appellants' burden of proof is not lessened by their inability to produce supporting evidence. (See Appeal of Thomas L. and Wylma Gore, Cal. St. Rd. of Equal., Dec. 11, 1973.)

Under the circumstances, we are forced to conclude that appellants have not carried their burden of proving that respondent's action was erroneous. That action must therefore be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Earle J. and Mildred H. Fischer for refund of personal income **tax in** the amount of \$257.42 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 19'78, by the State Board of Equalization.

George P. Kelly, Chairman
Wesley D. Smith, Member
Paul H. Klein, Member
William W. Burnett, Member
_____, Member